

HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC.,

Plaintiff,

v.

NICHOLAS MINOR a/k/a "LORD
NAZO,"

Defendant.

CASE NO. 2:22-cv-371-MJP

**DECLARATION OF JAMES
BARKER**

1. I am in-house counsel for Bungie, Inc. ("Bungie"), and I submit this declaration in support of Plaintiff's Motion for Summary Judgment against Defendant Nicholas Minor. The facts stated herein are true based on my personal knowledge and review of corporate documents and information, and I could and would testify competently thereto if called to do so.

2. As the rights holder, Bungie has authorized *Destiny 2* fans to create derivative works using Bungie's intellectual property, so long as those works comply with Bungie's Intellectual Property and Trademarks Policy (the "IP Policy"). Attached hereto as **Exhibit 1** is a copy of the IP policy. This freedom to create derivative works based on the game they love allows Bungie to facilitate the development of a thriving community of millions of *Destiny* fans who deeply engage with the *Destiny 2* game and

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1 storyline. The more positively engaged the *Destiny 2* community is with each other and
2 with Bungie, the more they engage with the *Destiny 2* expansions and in-game content
3 that are Bungie's source of revenue.

4 3. Although the majority of the *Destiny 2* community abides by the IP Policy,
5 content creators occasionally violate that policy and infringe Bungie's copyrights by,
6 among other things, uploading songs ripped from *Destiny 2* soundtracks to YouTube
7 without adding their own creative content. When creators attempt to monetize mere
8 copies of Bungie's intellectual property, particularly the soundtracks, they compete
9 with Bungie-owned distribution channels such as the Bungie Store. Bungie therefore
10 employs the services of a third-party brand protection vendor, CSC Global, to monitor
11 for such infringement and submit takedown notices under the Digital Millenium
12 Copyright Act ("DMCA") on behalf of Bungie. A member of Bungie's legal department
13 either initiates a request or reviews content flagged by CSC before DMCA takedown
14 notices are submitted; Bungie does not use automated processes, and CSC does not
15 issue takedowns without Bungie's permission. Because YouTube's large-scale copyright
16 processes require the use of a Gmail address, CSC's legitimate takedowns have been
17 submitted from the email address DavidThomsonCSC@gmail.com.

18 4. In December 2021, I instructed CSC to issue takedown notices to YouTube
19 targeting videos that infringed Bungie's copyrighted music, including several videos
20 posted to the "Lord Nazo" YouTube channel. Again, in February and March of 2022, I
21 instructed CSC to monitor for infringement of the *Destiny 2: The Witch Queen*
22 soundtrack and subsequently requested that CSC issue DMCA takedown notifications
23 against YouTube videos that consisted of rips of this soundtrack without substantial
24 content added by the creator.

25 5. Beginning on March 17, 2022, a wave of DMCA takedown notices that
26 Bungie had *not* filed or authorized began targeting YouTube videos posting *Destiny 2*
27 content that complied with the IP Policy. The takedowns caused panic and fury in the
Declaration of James Barker

1 *Destiny 2* community. Because Minor had fraudulently submitted his strikes in the
2 name of Bungie's authorized agent, the community initially misattributed these actions
3 to Bungie, at great harm to our reputation. Many community members deleted their
4 content even without being struck out of fear of losing their channels. Examples of the
5 community reactions are attached hereto as **Exhibits 2-8**.

6 6. Bungie pays active attention to fan sentiment and was aware of the
7 community reaction as it was occurring. Given the damage to both our community and
8 our reputation, we immediately devoted significant resources to both stopping the
9 attacks and figuring out where they came from. After confirming with CSC that it had
10 not sent these takedowns, Bungie personnel contacted YouTube to try to reverse the
11 takedowns and prevent further fraudulent notices from being honored, with little initial
12 success. At one point, YouTube refused to reverse the deletions because Bungie did not
13 submit withdrawals of the DMCA notices from the same email address that initially
14 sent the notices – something Bungie had no ability to do because it (and its agents) had
15 no access to or control over that email account.

16 7. In addition to working with YouTube, Bungie engaged counsel to file a
17 lawsuit and counsel's in-house investigator and paralegal, Kathryn Tewson, to work on
18 identifying the then-anonymous actor who was conducting the takedown attack, both
19 at significant expense.

20 8. I have reviewed the accompanying Declaration of Kathryn Tewson
21 describing the investigative efforts that identified Minor as the individual behind the
22 fraudulent takedown notices, and it accurately describes information from Bungie's
23 corporate records used in that investigation, including the logged IP addresses from
24 which Minor accessed *Destiny* and *Destiny 2* and downloaded an emblem from Bungie
25 (which he had obtained as part of a soundtrack purchase), and the physical and email
26 addresses Minor used in connection with the soundtrack purchase.

27 Declaration of James Barker

1 Executed on December 22, 2023

2
3 /s/ James Barker
4 James Barker
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